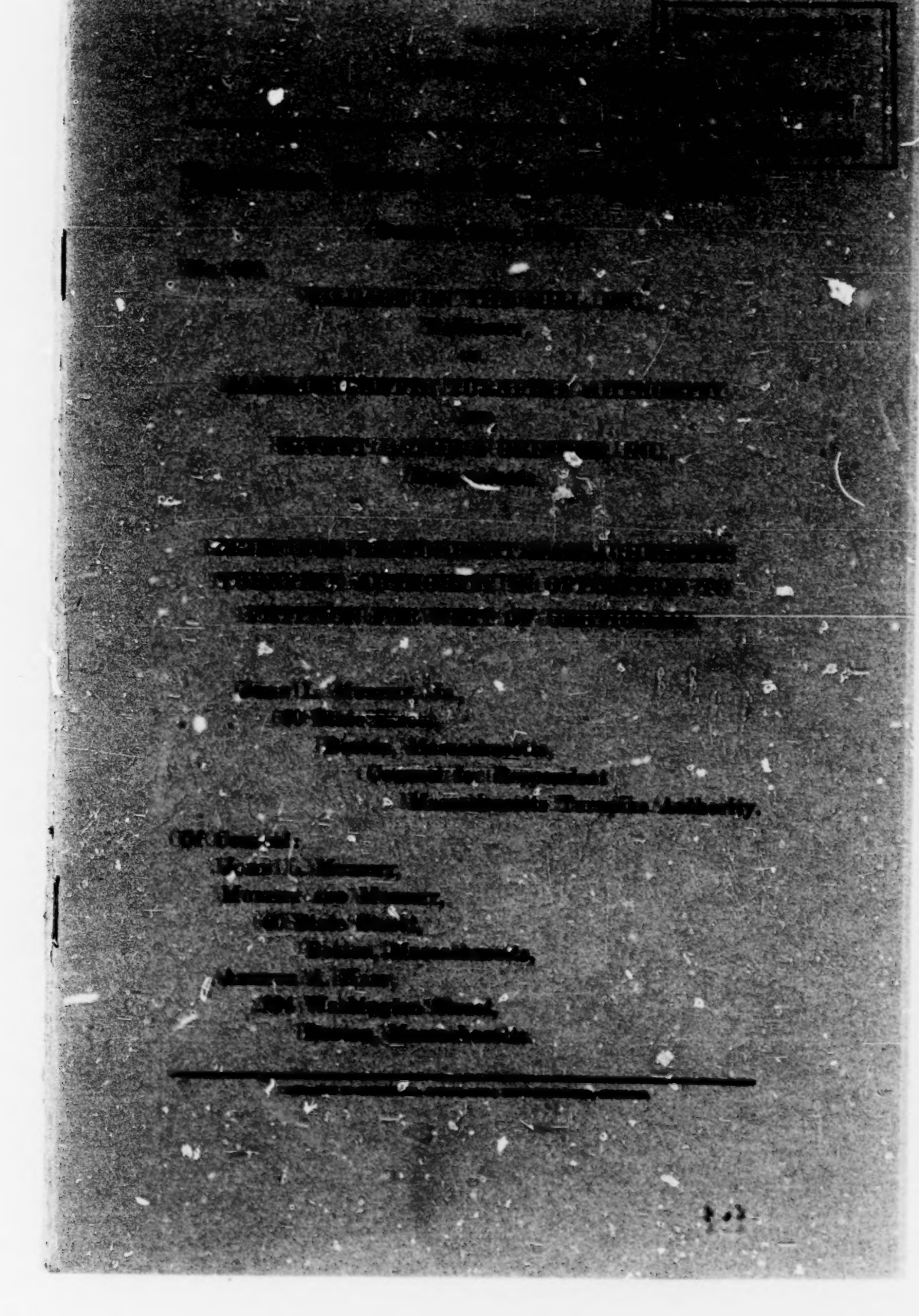

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STATUTE.

St. 1952, c. 354

§ 5 7

§ 7 2, 7

Supreme Court of the United States.

OCTOBER TERM, 1964.

No. 890.

VILLAGE ON THE HILL, INC.,
Petitioner,

v.

MASSACHUSETTS TURNPIKE AUTHORITY
AND
RIVETT LATHE & GRINDER, INC.,
Respondents.

BRIEF FOR RESPONDENT MASSACHUSETTS TURNPIKE AUTHORITY IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI.

Opinions Below.

The opinion of the Supreme Judicial Court of Massachusetts is reported in 1964 Mass. Adv. Sh. 1245, and is printed in Appendix A of the Petition. The findings, rulings, order for decree, amendments and final decree of the Massachusetts Superior Court are unreported and are printed in Appendix C of the Petition.

Jurisdiction.

The jurisdiction requisites are adequately set forth in the Petition.

Statutes Involved.

In addition to the portions of Massachusetts Statutes, 1952, c. 354, as amended by Massachusetts Statutes, 1955, c. 47, and Massachusetts Statutes, 1958, c. 384, which are set forth in the petition (Appendix D, pp. D1-D3), the following portions thereof are pertinent:

> "SECTION 5. *General Grant of Powers.*—The Authority is hereby authorized and empowered—
>
> . . . . . .
>
> "(*j*) To acquire, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties under this act;
>
> . . . . . .
>
> "(*p*) To do all acts and things necessary or convenient to carry out the powers expressly granted in this act."
>
> "SECTION 7. *Incidental Powers.*—
>
> . . . . . .
>
> "The Authority . . . shall sell, if a sale be practicable, or if not, shall lease, if a lease be practicable, any lands or rights or interest in lands or other property taken or purchased for the purposes of this act, whenever the same shall, in the opinion of the Authority, cease to be needed for such purpose. . . ." (St. 1952, c. 354, § 7.)

Question Presented.

Whether this Court should grant a writ of certiorari to review a determination by the highest court of the Commonwealth of Massachusetts that an eminent domain taking of certain private property by a state turnpike authority was for a public purpose and was within the powers

granted to said state authority by the Legislature of Massachusetts.

Statement of the Case.

This respondent adopts as its statement of this case the facts as stated in the opinion of the Supreme Judicial Court, which is printed in the Petition (Appendix A), and as set forth in the findings of the trial court, contained in the opinion of the Superior Court, which is printed in the Petition (Appendix C).

Argument.

I. THIS HONORABLE COURT SHOULD ACCEPT THE HIGHEST STATE COURT'S DETERMINATION AS TO THE VALIDITY OF THE TAKING UNLESS IT IS CLEARLY WRONG.

Where, as in the instant case, the assignments of error come to the single point as to the character of the use, and the highest state court has declared the use to be a public one, this Honorable Court should accept the judgment of said state court unless it is clearly without merit and is wholly unreasonable.

Union Lime Co. v. *Chicago & Northwestern Railway Co.*, 233 U.S. 211, 218 (1913).

Clark v. *Nash*, 198 U.S. 361, 369 (1904).

Fallbrook Irrigation District v. *Bradley*, 164 U.S. 112, 160 (1896).

Jones v. *City of Portland*, 245 U.S. 217, 221, 222 (1917).

Hairston v. *Danville & Western Railway Co.*, 208 U.S. 598, 607 (1907).

Rindge Co. v. *County of Los Angeles*, 262 U.S. 700, 705, 706 (1922).

The question as to whether a use for which private property is taken is public or private is a judicial question, the

determination of which is influenced by local conditions; and this Court, while enforcing the Fourteenth Amendment, should keep in view the diversity of such conditions, and regard with great respect the judgments of state courts upon what should be deemed public uses.

Rindge Co. v. *County of Los Angeles, supra,* 705, 706.

Fallbrook Irrigation District v. *Bradley, supra,* 160.

In the *Fallbrook* case, the Court said: "It never was intended that the court should, as the effect of the [Fourteenth] amendment, be transformed into a court of appeal, where all decisions of state courts involving merely questions of general justice and equitable considerations in the taking of property should be submitted to this court for its determination. The final jurisdiction of the courts of the States would thereby be enormously reduced and a corresponding increase in the jurisdiction of this court would result, and it would be a great misfortune in each case." (P. 157.)

II. The Decision Below is Clearly Correct.

The trial court found that the taking was for a public purpose and that it was a valid exercise of the power granted to this respondent by the state Legislature (Petition, Appendix C, p. C-13). In reviewing this case on the petitioner's appeal, the highest state court found: "The ultimate conclusions of fact of the trial judge are supported by his subsidiary findings and are not shown by the reported evidence to be plainly wrong in any material respect" (Petition, Appendix A, p. A-8). This highest state court affirmed the trial court's final decree (Petition, Appendix B).

The decision of the Supreme Judicial Court in the case at hand was in complete harmony with well-settled law both within and without the Commonwealth.

A number of decisions have answered questions of law involved in this case:

(*a*) A taking for a highway is clearly for a public purpose.

Talbot v. *Hudson*, 16 Gray 417, 423.
Rindge Co. v. *County of Los Angeles, supra*, 706.

(*b*) The taking of private land for the extension of a public way to make land of the taking agency more accessible is a taking for a public use even though the land which is thereby made more accessible may be leased or sold to private persons.

Wright v. *Mayor & City Council of Cambridge*, 238 Mass. 439.
Luke v. *Massachusetts Turnpike Authority*, 337 Mass. 304.

(*c*) That the number of probable users of a way may not be large or that the way may enure directly to the benefit of individual owners abutting thereon does not make such way any less a public work for the construction of which private property may well be taken.

Talbot v. *Hudson, supra*, 423.
Denham v. *County Commissioners of Bristol*, 108 Mass. 202.
Luke v. *Massachusetts Turnpike Authority*, 337 Mass. 304, 311.
Rindge Co. v. *County of Los Angeles*, 262 U.S. 700, 707.

(*d*) "It has never been deemed essential that the entire community or any considerable portion of it should directly

enjoy or participate in an improvement or enterprise, in order to constitute a public use, within the true meaning of these words as used in the Constitution. Such an interpretation would greatly narrow and cripple the authority of the legislature, so as to deprive it of the power of exerting a material and beneficial influence on the welfare and prosperity of the State. In a broad and comprehensive view, such as has been heretofore taken of the construction of this clause of the Declaration of Rights, everything which tends to enlarge the resources, increase the industrial energies, and promote the productive power of any considerable number of the inhabitants of a section of the State, or which leads to the growth of towns and the creation of new sources for the employment of private capital and labor, indirectly contributes to the general welfare and to the prosperity of the whole community."

Talbot v. *Hudson, supra,* 425.
Wright v. *Mayor & City Council of Cambridge, supra,* 441.

(*e*) "Whether the taking is for a public purpose is a subject for judicial examination. *Boston* v. *Talbot,* 206 Mass. 82, 89-90. *Burnham* v. *Mayor & Aldermen of Beverly,* 309 Mass. 388, 390. *McAuliffe & Burke Co.* v. *Boston Housing Authority,* 334 Mass. 28, 30. And if the taking is for a public purpose, the necessity for the appropriation is not a judicial question, but a legislative one, irrespective of whether the determiuation was by the Legislature or by public officers to whom the Legislature has delegated the power. *Tate* v. *Malden,* 334 Mass. 507, 508. *Hayeck* v. *Metropolitan District Commission,* 335 Mass. 372, 375. *Court Strect Parking Co.* v. *Boston,* 336 Mass. 224, 230."

Luke v. *Massachusetts Turnpike Authority,* 337 Mass. 304, 307, 308.
Rindge Co. v. *County of Los Angeles, supra,* 709.

(*f*) The taking of more land than was to become permanently a part of the highway does not invalidate the taking.

Boston v. *Talbot*, 206 Mass. 82, 90.
Luke v. *Massachusetts Turnpike Authority*, 337 Mass. 304, 309-310.
Robie v. *Massachusetts Turnpike Authority*, 1964 Mass. Adv. Sh. 1067.
Rindge Co. v. *County of Los Angeles*, *supra*, 705, 709.

(*g*) It is appropriate for the Authority to sell or lease portions of lands purchased or taken by it which are in excess of its needs.

St. 1952, c. 354, §§ 5 (j), 7.
Petition, Appendix (p. A-9).

III. The Petitioner's Arguments are Inapplicable to the Instant Case.

The omission of material facts from the "Statement" in the petition renders specious and inapplicable the "Questions Presented" by the petitioner. The sketch plan in the Supreme Judicial Court opinion (Petition, Appendix p. A-3) and the following facts from the record demonstrate this:

(1) This Reserved Area is a strip of land, fifty feet wide, which is reserved for future extension of a road into the City of Newton (Petition, p. 17, Appendix, p. A-5-6).

(2) The newly constructed road ends at this Reserved Area (Petition, Appendix, p. A-3).

(3) This Reserved Area *is not* included in the purchase and sale agreement between the respondents (Petition, Appendix, p. A-6, R. 2-337-338).

(4) By the purchase and sale agreement the respondent Rivett is given a license to use this area, for parking of vehicles and other uses, until such time as the relocated street is extended therein and provided such uses shall not interfere with any uses or requirements therein of this respondent (R. 2-379).

(5) The Reserved Area provides access for other land of this respondent which is not included in the purchase and sale agreement, and which lies in the City of Newton and abuts the Newton-Boston boundary line, and which would otherwise be inaccessible to a highway (R. 3-22).

Upon completion of its construction the Newton Street Extension will become a local public way (R. 1-12). The taking of the petitioner's land in connection with the laying out of the Newton Street Extension is for a public purpose, *i.e.*, a highway.

With the exception of the case of *Rindge Co.* v. *County of Los Angeles*, 262 U.S. 700, which is also cited by the respondent, the cases cited by the petitioner have no relevance to the law of the Commonwealth of Massachusetts or the facts of the instant case. The case of *Missouri Pacific Railway Co.* v. *Nebraska*, 164 U.S. 403, cited by the petitioner on page 13 of its petition, is clearly distinguishable from the instant case. In the *Missouri Pacific* case the attempted transfer of property was exclusively for a private purpose, with no reference to any benefit to the public in general. In the instant case, the Massachusetts courts held that the taking was primarily for a public purpose, and that any private benefit that may have resulted was simply a "by-product" of the taking, and did not invalidate it (Petition, Appendices A and B). And this Court has

also held that, where property is taken for a purpose which is primarily public, it will not be invalidated because of any incidental private benefit that may have accrued from it.

Hendersonville Light & Power Co. v. *Blue Ridge Interurban Railway Co.*, 243 U.S. 563.
Hairston v. *Danville & Western Railway Co.*, 208 U.S. 598.

Conclusion.

On the state level the petitioner's complaints have been fully litigated. On the federal level they do not raise any constitutional questions that have not already been decided by this Court.

For these reasons, this petition for a writ of certiorari should be denied.

Respectfully submitted,

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